IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.550 OF 2007

At the instance of
Ms Amrit Harbhajan Kaur Jagdev, .. Petitioner

Vs

The State of Maharahstra and Anr. Respondents.

Ms Michelle Mendonca and Ms C Fernandes for the petitioner.
Mr S.R.Borulkar, Public Prosecutor, for respondent no.1.
Mr R.C.Mishra, for respondent no.2.

CORAM : SMT.RANJANA DESAI & D.B.BHOSALE,JJ.
DATED : 09th APRIL, 2007

P.C.:

1. We have heard the learned counsel for the petitioner, the learned Public Prosecutor for respondent no.1-State and the learned counsel for respondent no.2.

2. The petitioner is a representative of International Justice Mission Project (for short, "IJMP"), an NGO working to rescue minor girls being commercially exploited or being trafficked for the purposes of sex. In this petition, the petitioner has challenged the order dated 9.3.2007 passed by the Ist Ad-hoc Assistant Sessions Judge, Gr.Bombay. The operative part of the said order reads as under:

> "On verification and on identification of the applicant as father of minor girl, Ms Chandana Sudam Jena be handed over to him. Application Nos 121/07 and 167/07 are disposed of by common order."

3. The learned counsel for the petitioner submitted that the impugned order is illegal and is passed without noticing the judgment of this Court in **Prerana Vs. State of Maharashtra, 2002 ALL MR (Cri) 2400**. The learned counsel states that the second respondent, who is the father of the girl child, had filed an application before the Child Welfare Committee, praying that the girl child Chandana be handed over to him. The Child Welfare Committee, on 27.12.2006, ordered that the child Chandana shall continue to stay at St.Catherine's Home to ensure her safety and protection. It was further observed that Chandana can be taken to her native place in Orissa, with Social worker of IJM, to visit her family and be brought back to St.Catherine's home for her further studies. P.O.,Govt.Special Home, Deonar, was directed to do counselling to her family members, especially her father. Admittedly, against this order an appeal is provided under section 52 of the Juvenile Justice (Care and Protection of Children) Act, 2000. The second respondent has, however, not filed such an

appeal. In our opinion, in the circumstances the learned Sessions Judge could not have entertained the second respondent's application. Besides since the said order is passed, being oblivious of this court's judgment in **Prerana's case** (supra), we feel that it should be set aside. Hence, we pass the following order.

(i) The impugned order dated 9.3.2007 passed by the learned Ist Ad-hoc Assistant Sessions Judge, Gr.Bombay in Misc. Application No.121 of 2007 and Misc. Application no.167 of 2007 in Sessions Case No.830 of 2006, is set aside. If the second respondent files an appeal to the Sessions Court, Bombay, against the order dated 27.12.2006, the Sessions Court shall deal with it in accordance with law and having regard to the judgment of this Court in **Prerana Vs State of Maharashtra (2002 ALL MR (Cri) 2400**. The learned Sessions Judge shall hear the representative of IJMP, an NGO working to rescue minor girls being commercially exploited or being trafficked for the purpose of sex. A grievance is made before us that the Sessions Court passes orders in such matters ignoring the law laid down in the **Prerana's** case (supra) and gives custody of children to the persons only on the ground that they are natural guardians. If this is true such course should be avoided in

future by the Sessions Court. We expect the Sessions Court to pass appropriate orders having regard to the judgment of this Court in **Prerana's case** (supra) and more particularly to Article 39 (e) and (f) of the Constitution of India. With these observations, the writ petition is disposed of.

(D.B.BHOSALE,J.) **(SMT.RANJANA DESAI,J.)**